§ 169a.18 Administrative appeal procedures.

(a) *Appeals of Cost Comparison Decisions.* (1) Each DoD Component shall establish an administrative appeals procedure to resolve questions from directly affected parties relating to determinations resulting from cost comparisons performed in compliance with this part. The appeal procedure will not apply to questions concerning the following:

(i) Award to one contractor in preference to another;

(ii) DoD management decisions.

(2) The appeals procedure is to provide an administrative safeguard to ensure that DoD Component decisions are fair, equitable, and in accordance with procedures in this part. The procedure does not authorize an appeal outside the DoD Component or a judicial review.

(3) The appeals procedure shall be independent and objective and provide for a decision on the appeal within 30 calendar days of receipt of the appeal. The decision shall be made by an impartial official at a level organizationally higher than the official who approved the cost comparison decision. The appeal decision shall be final, unless the DoD Component procedures provide for further discretionary review within the DoD Component.

(4) All detailed documentation supporting the initial cost comparison decision shall be made available to directly affected parties upon request when the initial decision is announced. The detailed documentation shall include, at a minimum, the following: the in-house cost estimate with detailed supporting documentation (see § 169a.5(c)(ii) of this part), the completed CCF, name of the tentative winning contractor (if the decision is to contract), or the price of the bidder whose bid or proposal would have been most advantageous to the Government (if the decision is to perform in-house). If the documentation is not available when the initial decision is announced, the time alloted for submission of appeals shall be extended the number of days equal to the delay.

(5) To be considered eligible for review under the DoD Component appeals procedures, appeals shall:

(i) Be received by the DoD Component in writing within 15 working days after the date the supporting documentation is made available to directly affected parties.

(ii) Address specific line items on the CCF and the rationale for questioning those items.

(iii) Demonstrate that the result of the appeal may change the decision.

(b) *Appeals of Simplified Cost Comparisons and Direct Conversions.* (1) Directly affected parties may appeal decision to convert to contract based on a simplified cost comparison involving 11–45 DoD civilian employees or a direct conversion involving 10 or fewer DoD civilian employees. The appeal must address reasons why fair and reasonable prices will not be obtainable.

(2) Each DoD Component shall establish an administrative appeal procedure that is independent and objective; Installation Commanders must make available, upon request, the documentation supporting the decision to directly convert activities; appeals of direct conversions must be filed within 30 calendar days after the decision is announced in the Commerce Business Daily and/or FEDERAL REGISTER, and the supporting documentation is made available; an impartial official one level organizationally higher than the official who approved the direct conversion decision shall hear the appeal; officials shall provide an appeal decision within 30 calendar days of receipt of the appeal.

(c) Since the appeal procedure is intended to protect the rights of all directly affected parties, the DoD Component's procedures, as well as the decision upon appeal, will not be subject to negotiation, arbitration, or agreement.

(d) DoD Components shall include administrative appeal procedures as part of their implementing documents.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29210, July 1, 1992]

§ 169a.19 Study limits.

No DoD funds shall be available to perform any cost study pursuant to the provisions of OMB Circular A–76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function